

162 FERC ¶ 61,277
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 29, 2018

In Reply Refer To:
Chesapeake Energy Marketing, L.L.C.
BCE-Mach LLC
Docket No. RP18-530-000

John Paul Floom
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Dear Mr. Floom and Mr. Olson:

1. On March 1, 2018, Chesapeake Energy Marketing, L.L.C. (Chesapeake) and BCE-Mach LLC (Mach Resources) (collectively, Petitioners) filed a joint petition (Joint Petition) for temporary and limited waiver of the Commission's capacity release regulations and policies, and of related tariff provisions of Midcontinent Express Pipeline LLC (Midcontinent) and Southern Star Central Gas Pipeline, Inc. (Southern Star). Petitioners seek temporary and limited waivers of the Commission's capacity release rules set forth in section 284.8 of the Commission's regulations¹ and policies, including the posting and bidding requirements, the applicable maximum rate provisions, the prohibition against tying to the extent applicable, the shipper-must-have-title rule, the prohibition against buy-sell arrangements, as well as any other authorizations or waivers the Commission deems necessary and appropriate. For the reasons discussed below and for good cause shown, the Commission grants Petitioners' requested temporary limited waivers.

¹ 18 C.F.R. § 284.8 (2017).

2. Petitioners state they seek the waiver to allow the permanent release and assignment of portions of Chesapeake's firm transportation service agreements and capacity on Southern Star and Midcontinent from Chesapeake to Mach Resources as part of a larger asset sale transaction. Specifically, Petitioners state that Chesapeake seeks to permanently release and assign to Mach Resources portions of Chesapeake's transportation capacity on Midcontinent and all of Chesapeake's firm transportation capacity on Southern Star, which Chesapeake uses to transport its production and that of its affiliates.

3. Petitioners state that on January 29, 2018, wholly-owned subsidiaries of Chesapeake Energy Corporation, the parent of Chesapeake, entered into a purchase and sale agreement with Mach Resources to sell oil and gas assets and mineral leases located in Alfalfa, Woods, and Woodward Counties, Oklahoma, known as the "Mississippian Lime" area, as well as appurtenant facilities (Transaction). Petitioners state that under the proposed Transaction, Chesapeake will transfer to Mach Resources all of the related capacity, which Chesapeake uses to transport natural gas from the Mississippian Lime area to downstream markets. According to Petitioners, the rights to all of the related capacity are being transferred to Mach Resources in order for current production to be transported from the Mississippian Lime area to downstream markets in the same manner for Mach Resources, as it has been for Chesapeake. Petitioners state that the transfer of the related capacity is an integral part of the Transaction.

4. Petitioners note that the discounted and negotiated rates under the related capacity contracts are not equal to the corresponding maximum recourse rate, and in effectuating the permanent release of all the related capacity contracts, Petitioners desire to maintain the commercial arrangements reflected in the contract rates for the remainder of the terms of the related capacity. Petitioners state that this will preserve the benefits of the bargains struck for Midcontinent and Southern Star, as the pipelines, and Mach Resources, as the shipper, under the existing firm transportation contracts for the related capacity. Petitioners further state that upon approval of the requested waivers, Chesapeake and Mach Resources will work with Midcontinent and Southern Star to enter into revised contracts and make the filings, including with respect to the negotiated rate contracts, with the Commission necessary to effectuate the permanent release of the related capacity contracts.

5. Petitioners request expedited action by the Commission because the proposed waivers are requested in conjunction with the sale of production interests that require use of the related capacity. They contend that the waivers are in the public interest as they will facilitate the continued production of the transferred properties in the Mississippian Lime area, where the assets are located, because Mach Resources will have the firm transportation rights necessary to move such production to markets. Therefore, Petitioners ask that the Commission issue an order approving the waivers on or before

March 30, 2018, and that the waivers remain effective for 120 days from the date of issuance.

6. Petitioners contend that the waivers requested are consistent with past Commission action on similar petitions.² They argue that the Commission has allowed the permanent release of only a portion of the releasing party's firm transportation contract to match the interests in production properties being transferred.³ In addition, Petitioners state that the Commission has allowed permanent releases, without posting for bidding, even if the negotiated rates applicable to the released capacity are above the applicable maximum recourse rates.⁴ Finally, Petitioners state that the Commission has recognized that a failure to grant similar requested waivers would inhibit the transfer of capacity from a shipper that no longer requires the capacity to a shipper that requires it as a part of an overall, complex commercial transaction.⁵

7. Public notice of the filing was issued on March 5, 2018, with interventions and protests due no later than March 8, 2018. Pursuant to Rule 214,⁶ all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On March 14, 2018, Southern Star filed a motion to intervene out-of-time and comments.

8. Southern Star comments that the proposed waivers would expedite the permanent assignment of a long-term firm transportation agreement from a shipper who is in the

² Joint Petition at 8 & n.3 (citing *Anadarko Energy Services Co.*, 158 FERC ¶ 61,130 (2017); *Mitsui & Co. Energy Marketing and Services (USA) Inc.*, 158 FERC ¶ 61,104 (2017); *Vitruvian II Woodford, LLC*, 158 FERC ¶ 61,120 (2017); *Chesapeake Energy Marketing, L.L.C.*, 157 FERC ¶ 61,097 (2016); *Freeport-McMoRan Exploration & Production LLC*, 157 FERC ¶ 61,171 (2016); *WPX Energy Marketing, LLC*, 156 FERC ¶ 61,037 (2016); *EQT Energy, LLC*, 156 FERC ¶ 61,013 (2016); *Wyoming Interstate Co., L.L.C.*, 146 FERC ¶ 61,040 (2014); *Marathon Oil Co.*, 133 FERC ¶ 61,168 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023, at PP 10-12 (2010); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009)).

³ *Id.* at 8 & n.13 (citing *Total Gas & Power*, 131 FERC ¶ 61,023 at PP 3, 12).

⁴ *Id.* at 8 & n.14 (citing *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086, at PP 7-8 (2009)).

⁵ *Id.* at 8 & n.15 (citing *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 at PP 14-15).

⁶ 18 C.F.R. § 385.214 (2017).

process of establishing creditworthiness but has not as yet done so. According to Southern Star, Mach Resources has represented to Southern Star that consistent with Southern Star's tariff, it will either make a prepayment or provide an acceptable letter of credit representing three months of firm service when the assignment is made. However, Southern Star states that this prepayment or letter of credit will not be made until the Transaction between Mach Resources' affiliates and Chesapeake's affiliates closes and the transportation services agreements are assigned. Southern Star does not oppose the Joint Petition but asks that any waivers granted be conditioned upon Mach Resources providing the agreed prepayment or letter of credit.

9. The Commission has reviewed Petitioners' request for all needed temporary waivers and approvals to complete the proposed Transaction and finds that the request is adequately supported and appears consistent with previous waivers that the Commission granted to permit the release of capacity under similar circumstances. The Commission acknowledges Southern Star's comments and in response notes that granting the requested waivers does not in any way obviate Southern Star's right to collect any collateral from Mach Resources in order for Mach Resources to establish creditworthy status. Moreover, no party has objected to the requested waivers.

10. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waivers as set forth in the petition and discussed above. The waivers are limited to the extent necessary to effectuate the Transaction discussed above and to complete the permanent releases of capacity specified in the Joint Petition. The waivers shall remain in effect for a 120-day period following the issuance of this order, as requested. The Commission directs Petitioners to provide notice of the Transaction's close in this docket.

By direction of the Commission. Chairman McIntyre is not participating.

Kimberly D. Bose,
Secretary.